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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09 674,109	06/21/2001	Anita Diu-Hercend	146 1353	3121

20311 7590 04/28/2003

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NEW YORK, NY 10016

EXAMINER

LEFFERS JR, GERALD G

ART UNIT	PAPER NUMBER
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1636

DATE MAILED: 04/28/2003

12

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/674,109

Applicant(s)

DIU-HERCEND ET AL.

Examiner

Gerald G Leffers Jr.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 April 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 13-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 13-28 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s) _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

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DETAILED ACTION

Election/Restrictions

Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions that are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Groups 1-90, claim(s) 13, 15-16, 18-28, drawn to an *in vitro* assay for screening potential antimycotic substances featuring a particular essential gene selected from a Markush group of such essential genes.

Groups 91-180, claim(s) 13-14, 16-17, 19-28, drawn to an *in vivo* (i.e. cellular-based) assay for screening antimycotic substances featuring a particular essential gene selected from a Markush group of such essential genes.

Groups 181-270, claim(s) 13, 15-16, 18-28, drawn to an *in vitro* assay for screening potential antimycotic substances featuring a particular essential gene product selected from a Markush group of such essential gene products.

Groups 271-360, claim(s) 13-14, 16-17, 19-28, drawn to an *in vivo* assay for screening potential antimycotic substances featuring a particular essential gene product selected from a Markush group of such essential gene products.

The inventions listed as Groups 1-360 do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons: the special technical feature of each method is the combination of the particular gene or gene product along with the particular assay conditions (e.g. cellular or a cellular). Each essential gene has structural/functional characteristics that are unique to that particular gene sequence. Each essential gene product is structurally/functionally distinct from the gene that encodes the gene product. Assays done *in vitro* or *in vivo* comprise technical features not required for or present in assays done in the other environment (e.g. purification of the target component or recombinant expression of a gene in a cell). For example, methods of determining an antimycotic agent featuring targeting expression of a particular gene sequence *in vivo* involve the technical feature of the particular essential gene (i.e. the structural/functional characteristics of that particular gene) and the particular technical features

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of an assay involving *in vivo* gene expression (e.g. antisense technology). These special technical features are different from those involved in, for example, *in vitro* assays featuring a particular essential gene product (e.g. structural/functional characteristics of the particular protein).

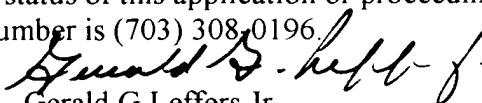
Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gerald G Leffers Jr. whose telephone number is (703) 308-6232. The examiner can normally be reached on 9:30am-6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Remy Yucel can be reached on (703) 305-1998. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-7939 for regular communications and (703) 305-7939 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.



Gerald G Leffers Jr.

Examiner

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April 24, 2003